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EXAMINER	
BROOKS, MATTHEW L	

ART UNIT	PAPER NUMBER
3629	

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03/22/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/797,274	KIRCHHOFF ET AL.	
	Examiner	Art Unit	
	MATTHEW L. BROOKS	3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 December 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *10 and 13-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *10 and 13-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This communication is in response to the claims and remarks filing on 24 December 2009.

Status of Claims

2. Original claims 10 and 13-16 are currently pending.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. First note for interpretation purposes the term "recipe" will be given its dictionary definition as defined by www.merriam-webster.com as 2 : a set of instructions for making something from various ingredients OR 3 : a formula or procedure for doing or attaining something.

5. Claims **10 and 13-16** are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,673,691 (Abrams).

6. With respect to **claim 10** : Abrams teaches a system for generating and displaying a single, composite nutritional indicator for a serving of a multiple ingredient recipe, the recipe being supplied by the user of the system, said system comprising:

a. a user interface for receiving from the user the identity and amount of the ingredients of the recipe (Fig 17, user identifies recipe is "Breakfast" and the ingredients for breakfast that the user chooses are Fig 20 "Cinnamon Oatmeal and Banana") and serving size information (Then at Figs 21-24 user can select different serving size substitutes; ALSO NOTE, More UI screen shots showing receiving selection of ingredients and serving size info can be found at Figs 55-56);

b. a database containing nutritional data for common recipe ingredients including the recipe ingredients identified by the user (First note at Figure 4 the user interface 1700 is taught to be commutatively coupled to many databases, Fig 21, shows recipe ingredients, 1 ¼ cup hot oatmeal, and med banana, 8 oz skim milk ALSO;

(184) The Subject Matter Database 1100 stores medical, scientific, nutritional and other relevant data related to the behaviors of interest for a particular application. For example, for a weight management application, the following information are stored: nutritional data for various foods; meal menus for nutritionally balanced breakfasts, lunches, and dinners; common food substitutions; a selection of "healthy" snacks;),

the nutritional data comprising plural nutritional parameters for each ingredient (Fig 22 - first nutritional parameter is serving size; second is calories, third is fat ALSO see AND Food Item Table;(203) This table contains a record for each unique food item used in the menus stored in the Subject Matter Database. It stores nutrient data used in analysis of the menus. See Columns 29-30);

a processor for calculating the single, composite nutritional indicator for a serving of the recipe from the user information and the database data (single composite

indicator Fig 22, in rectangle; the recipe being cinnamon oatmeal and banana, the single composite nutritional indicator is 373 – total calories), the single, composite nutritional indicator being a single numerical value calculated based on the plural nutritional parameters for each ingredient (Fig 22, utilizes serving size and food type to determine composite indicator = total calories; 363 calories is the single numerical value calculated AND AND (172) "Each item on the menu is noted and the quantities are added to a global count for that item. In the case of items which are composed of other items, the global count is extended one step further. At the end, the user is presented with a list of all items used in all planned menus, with a cumulative total of the quantity required. In data processing terms, this is a classic "Bill of Materials Explosion." While creation of a shopping list and meal planning functions are complex, they are straightforward for any competent programmer to implement") ; and

a display field for displaying the calculated composite nutritional indicator for a serving of the recipe (Fig 22, indicator displayed with in rectangle AND (172) "Each item on the menu is noted and the quantities are added to a global count for that item. In the case of items which are composed of other items, the global count is extended one step further. At the end, the user is presented with a list of all items used in all planned menus, with a cumulative total of the quantity required. In data processing terms, this is a classic "Bill of Materials Explosion." While creation of a shopping list and meal planning functions are complex, they are straightforward for any competent programmer to implement").

7. With respect to **claim 13** : Abrams teaches wherein the user interface further includes individual nutritional indicator display fields operable to display the plural nutritional parameters nutritional indicators associated with each ingredient of the recipe (Fig 26, wedge replace banana indicator change and serving size listed).

8. With respect to **claim 14** : Abrams teaches wherein the user interface further includes selectable indicia operable to be selected to include or remove the ingredients of the recipe (Fig 23 – substitute food).

9. With respect to **claim 15** : Abrams teaches a user interface includes a selectable list of the ingredients associated with at least one of a food manufacturer and a restaurant (Fig 25, inherently the ingredients are associated with a food manufacturer).

10. With respect to **claim 16** : Abrams teaches further comprising a second database operable to maintain a history of consumption of the multiple ingredient recipes and associated single, composite nutritional indicators (Fig 47, total calories target, and total calories *actual*).

Response to Arguments

11. Applicant's arguments with respect to claims 10 and 13-16 have been considered but are not persuasive.

12. With respect to pages 2-3 Applicant, argues on the whole page and next a concept of "points"® further describing the true nature and possible novelty of the nutritional indicator. Examiner does not address these arguments because Applicant has failed to claim any of it in claims 10 and 13-16.

13. With respect to page 4, first paragraph again, Abrams need not teach the system argued, only the system claimed. With respect to the system claimed Abrams teaches a comprehensive system that allows a user to have a goal that has a threshold of nutritional parameters that a user is allowed based upon said goal (see above). In this Abrams is identical to the claimed invention.

14. With respect to the bottom of same first paragraph on p. 4, Applicant argues "Abrams does not disclose, teach or suggest in any way calculating and outputting a single numerical value calculated based on the plural nutritional parameters for each ingredient for a serving of a multiple ingredient recipe. " This is merely not true, Fig 22, teaches a single numerical value, "373 calories" based on the plural nutritional parameters; that is the calories of all three. Applicant never states that composite number calculated has to be based upon different nutritional parameters. If this calculation was incorporated into the claim it may even be something that may be allowable. Thus in response to argument bridging p. 4- p. 5 No separate calculation is required.

15. In direct reply to the second full paragraph on p. 5; Applicant states "Claim 10, as amended, requires two different types of date/data: "; First note claim 10 does not anywhere in it require two different. As to the two data argued "(1) data received from the user via a user interface, particularly "the identity and amount of the ingredients of the recipe and serving size information"; and (2) data stored in a database, particularly, "plural nutritional parameters for each ingredient." The processor used both types of data in calculating the single composite nutritional indicator."

Abrams teaches (1) – at Fig 24 user chooses 1 wdg of watermelon AND Abrams teaches (2) Fig 26 calories with watermelon wedge still acceptable based upon

threshold, and processor calculates new single composite nutritional indicator "360 calories" based upon all of the ingredients/plurality of nutritional parameters (three sets of different food group calories) serving size selected and associated nutritional data.

16. In response to p.5 bridging p. 6 these are already addressed directly above.

Conclusion

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW L. BROOKS whose telephone number is (571)272-8112. The examiner can normally be reached on Monday - Friday; 8 AM - 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Matthew L. Brooks/
Patent Examiner, GAU 3629
3/17/2010